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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)

Industry Proposal for Rating)
Video Programming)

FEDERAL COMMUNICATIONS
COMMISSION
OFFICE OF SECRETARY
CS Docket No. 97-55

Comments of
CENTER FOR MEDIA EDUCATION
AMERICAN PSYCHOLOGICAL ASSOCIATION
CENTER FOR MEDIA LITERACY
CHILDREN'S DEFENSE FUND
CHILDREN NOW
CULTURAL ENVIRONMENT MOVEMENT
INSTITUTE FOR PUBLIC AFFAIRS OF THE UNION OF
ORTHODOX JEWISH CONGREGATIONS OF AMERICA
MEDIA CENTER OF THE JUDGE BAKER CHILDREN'S CENTER
NATIONAL ALLIANCE FOR NON-VIOLENT PROGRAMMING
NATIONAL ASSOCIATION FOR FAMILY AND COMMUNITY EDUCATION
NATIONAL ASSOCIATION OF ELEMENTARY SCHOOL PRINCIPALS
NATIONAL ASSOCIATION OF SCHOOL PSYCHOLOGISTS
NATIONAL COALITION ON TELEVISION VIOLENCE
NATIONAL COUNCIL OF LA RAZA
NATIONAL EDUCATION ASSOCIATION
NATIONAL INSTITUTE ON MEDIA AND THE FAMILY
NATIONAL PARENT TEACHER ASSOCIATION
PUBLIC MEDIA CENTER
TEACHERS FOR RESISTING UNHEALTHY CHILDREN'S ENTERTAINMENT

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SUMMARY

Congress intended a ratings system to empower parents by specifically identifying violent content and by providing parents with the descriptive information about violence, sexual content, and adult language necessary to make effective programming choices for their children. Because the industry system fails to meet these criteria, the Commission should find it unacceptable and insist upon a content-descriptive ratings system.

The industry ratings system is unacceptable because it does not specifically identify violent content. The industry system conflates violence, sex, and adult language into broad age-based categories. Thus, it prevents parents from specifically blocking televised violence, which Congress found to be a major factor contributing to the public health problem of violence in society.

The industry system is also unacceptable because it robs parents of the ability to make meaningful programming decisions for their children. Parents are in the best position to determine what programming is appropriate for their children. However, the industry proposal substitutes the self-interested judgment of Hollywood producers for what should be the child-rearing judgment of parents.

Moreover, the industry system will not work with the V-chip to allow parents to make effective programming decisions for their children. The industry ratings categories are so broad that programs containing disparate content receive the same rating. Also, the industry ratings do not denote the type (i.e., violence, sex, and adult language) and intensity (e.g., none, limited, graphic) that a program actually does contain. If the industry ratings system is used, parents will have to choose between blocking far more programming than they would like or blocking much less programming than they would like, thus serving little more purpose than the on-off button.

A ratings system must convey content-descriptive information to be acceptable. Such a system effectuates congressional intent because it specifically identifies violent content and empowers parents to make meaningful programming choices for their children with regard to all content. A content-descriptive system is feasible and simple, and it is well supported by parents, child experts, the industry, and members of Congress.

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Commenters, the Center for Media Education, American Psychological Association, Center for Media Literacy, Children's Defense Fund, Children Now, Cultural Environment Movement, Institute for Public Affairs of the Union of Orthodox Jewish Congregations of America, Media Center of the Judge Baker Children's Center, National Alliance for Non-Violent Programming, National Association for Family and Community Education, National Association of Elementary School Principals, National Association of School Psychologists, National Coalition on Television Violence, National Council of La Raza, National Education Association, National Institute on Media and the Family, National Parent Teacher Association, Public Media Center, and Teachers For Resisting Unhealthy Children's Entertainment ("CME *et al.*")¹ submit Comments in response to the Federal Communication Commission's ("FCC") Public Notice,² in which the FCC seeks comment on two issues: (1) whether the industry ratings system is "acceptable" and (2) whether the industry ratings system satisfies Congress' concerns. CME *et al.* assert that the industry proposal is unacceptable because it fails to empower parents as Congress intended. Specifically, it fails to empower parents to identify which programs contain violence and fails to provide parents with the descriptive information about violence, sexual content, and adult language necessary to make effective programming choices for their children.

¹ For a description of each organization, see Appendix.

² Public Notice, *Commission Seeks Comment on Industry Proposal for Rating Video Programming*, CS Docket No. 97-55, FCC 97-34, Report No. CS 97-6 (February 7, 1997).

I. CONGRESS INTENDED A RATINGS SYSTEM THAT WOULD EMPOWER PARENTS BY SPECIFICALLY IDENTIFYING VIOLENT CONTENT AND BY PROVIDING PARENTS WITH THE DESCRIPTIVE INFORMATION ABOUT VIOLENCE, SEXUAL CONTENT, AND ADULT LANGUAGE NECESSARY TO MAKE EFFECTIVE PROGRAMMING CHOICES FOR THEIR CHILDREN

The legislative history of the V-chip provision³ (“the provision”) shows that Congress had two main goals when enacting the provision. First, and fundamentally, having recognized television violence to be a key factor in an escalating public health problem, Congress sought a ratings system that specifically identifies violent content. Congress intended such a ratings system to empower parents to block violent programming. Second, and more broadly, Congress sought to empower parents by giving them meaningful information regarding not just violent content, but sexual content and adult language as well. In this manner, Congress intended to provide parents with all information necessary to make effective programming choices for their children. Evidence of these two goals is abundant throughout the legislative history.

The express language of the V-chip provision indicates that Congress sought a ratings system that specifically identifies violent content. The language of the statutory Findings (“the Findings”) clearly express concern about the public health problem to which violent programming contributes. The Findings report that a young child is exposed to an estimated 8,000 murders and 100,000 acts of televised violence by the time he or she completes elementary school.⁴ They also note that children exposed to such violent programming are more inclined to

³ Telecommunications Act of 1996, Pub. L. No. 104-104, title V, subtitle B, § 551, 110 Stat. 56, 139 (1996) (codified at 47 U.S.C. § 303(w)).

⁴ § 551(a)(5), 110 Stat. at 140.

The recently released National Television Violence study found no decrease in the amount of television violence. It reports that, in 1994-95, 58% of television programs contained violence and, in 1995-96, this figure increased to 61%. B. WILSON ET AL., *Violence in*

exercise violent and aggressive behavior.⁵ The Findings further cite the grave parental concern over televised violence and the corresponding desire of parents to be empowered to block such harmful programming.⁶ The Findings regarding the gross amount of violence that children view, the negative health effects that such exposure causes, and the serious parental concern over these issues indicate that Congress sought a ratings system capable of combating the ills of violent programming.

Moreover, the statutory references to sexual content and other programming show that, in addition to seeking a ratings system that specifically identifies violent content, Congress sought a system that gives parents meaningful information regarding other types of programming and the ability to separately block out each type of programming they deem inappropriate for their children.⁷ The V-chip provision gives the industry time to establish a ratings system that

Television Programming Overall, in NAT'L TELEVISION VIOLENCE STUDY (Exec. Summary), at 25 (1997).

⁵ § 551(a)(4), 110 Stat. at 140. Specifically, research shows that televised violence contributes to aggressive attitudes and behaviors, desensitization to the victims of violence, and fear among children. Dale Kunkel, Ph.D., *Why Content, Not the Age of Viewers, Should Control What Children Watch on TV*, CHRON. OF HIGHER EDUC., Jan. 31, 1997. See also *The Television Parental Guidelines System: Hearing Before the Senate Commerce, Science and Transportation Comm.*, 105th Cong., 1st Sess. (Feb. 27, 1997) [hereinafter *Hearing*] (testimony of Robert T.M. Phillips, M.D., Ph.D., American Psychiatric Association) ("The repeated exposure to violent imagery desensitizes us to violence and greatly increases the risk that we will manifest violence in our own behavior.").

⁶ § 551(a)(7), 110 Stat. at 140 ("Parents express grave concern over violent ... video programming and strongly support technology that would give them greater control to block video programming ... that they consider harmful to their children.").

⁷ The amount of sexual content on television worries parents as much as violent content. CHILDREN NOW & KAISER FAMILY FOUNDATION, SEX, KIDS AND THE FAMILY HOUR: A THREE-PART STUDY OF SEXUAL CONTENT ON TELEVISION 10 (1996). Moreover, 62% of children say that sex on television and in movies influences children to have sex when they are too young. CHILDREN NOW, SENDING SIGNALS: KIDS SPEAK OUT ABOUT VALUES IN THE

provides “information about the nature of upcoming video programming and ... the technological tools that allow [parents] easily to block violent, sexual, or other programming.”⁸ Also, in discussing the time frame for the industry’s establishment of voluntary rules, the provision refers to programming that contains “sexual, violent, or other indecent material.”⁹ This language indicates that, in addition to the fundamental goal of combating the adverse effects of televised violence, Congress sought a ratings system that would broadly empower parents by giving them all content-descriptive information necessary to make effective programming choices for their children.

The Conference Report on the Telecommunications Act of 1995 (“the Act”) provides further evidence of this dual intent. It refers explicitly to the government’s compelling interest in addressing the adverse effect of violent and indecent video programming.¹⁰

The Conference Report reflects the language in the House Report,¹¹ which discusses the negative effect of televised violence on a child’s values and perceptions and cites numerous studies confirming this dangerous impact.¹² The House Report states that V-chip legislation is

MEDIA (1995).

⁸ § 551(a)(9), 110 Stat. at 140.

⁹ § 551(e)(1)(A), 110 Stat. at 142.

¹⁰ See H.R. REP. No. 458, 104th Cong., 2d Sess. 195 (1996) (“Congress makes findings concerning the adverse impact of violent and indecent video programming on children, [and] the compelling interest of government in addressing this problem.”).

¹¹ See *id.* (stating that the “conference agreement adopts the House provisions with modifications”).

¹² H.R. REP. No. 204, 104th Cong., 1st Sess. 224-25 (1995) (citing reports by the Centers for Disease Control, the American Medical Association, the Carnegie Council on Adolescent Development, the National Institute of Mental Health, and the Surgeon General).

necessary to “protect[] the health and welfare of children and increas[e] the likelihood they will become productive, nonviolent citizens.”¹³ Thus, similar to the express language of the V-chip provision and the Conference Report, the House Report indicates that Congress recognized television violence to be a key factor in a public health problem, and, accordingly, sought a ratings system that would empower parents to block such programming.

In summary, the legislative history, including the express language of the V-chip provision, the Conference Report, the House Report, and congressional debate, show that Congress had two main goals in enacting the provision. Both goals focus on parental empowerment. First, in order to combat the negative effects of televised violence on public health, Congress sought to empower parents to block violent programming. Congress intended to accomplish this fundamental goal through parental use of a ratings system that specifically identifies violent content. Second, Congress sought a ratings system that more broadly empowers parents to make effective viewing choices for their children. To this end, Congress intended a ratings system to provide parents with meaningful information on sexual content and adult language, as well as violence.

II. THE INDUSTRY RATINGS SYSTEM IS NOT ACCEPTABLE BECAUSE IT DOES NOT SPECIFICALLY IDENTIFY VIOLENT CONTENT

The industry ratings system fails to address the public health problem to which televised violence contributes because it does not specifically identify violent programming. Rather, the industry system conflates violence, sex, and adult language into broad age-based categories.

¹³ *Id.* at 226.

Each category description merely includes the types of content that a program in that category *may* contain.

For example, the industry's TV-14 rating tells parents that a program in this category "may contain sophisticated themes, sexual content, strong language and more intense violence."¹⁴ Inherent in this description is that a TV-14 program also may contain no sexual content, no adult language, or no violence.¹⁵ Thus, the industry's TV-14 rating does not identify whether a particular program *actually does* contain intense, limited, or no violent content.¹⁶

Similarly, the TV-PG rating -- for programs which "may contain infrequent coarse language, limited violence, some suggestive sexual dialogue and situations"¹⁷ -- fails to tell parents whether or not a particular program does in fact contain violence. For example, episodes of CBS's *Everybody Loves Raymond*, which CBS advertises as the program to "grab your family and watch," and the WB's *Stories of the Highway Patrol* received the same TV-PG rating. *Everybody Loves Raymond* contained no violence and depicted the main character bringing home a stray puppy as a present for his brother. In contrast, *Stories of the Highway Patrol* was replete with violence, including the graphic depiction of a man beaten to death. The TV-PG rating provided no guidance as to the violent content, or lack thereof, in either program.

¹⁴ Letter from Jack Valenti, President and Chief Executive Officer, Motion Picture Association of America, *et al.* to William F. Caton, Secretary, Federal Communications Commission (Jan. 17, 1997), at 2 [hereinafter *Industry Proposal*] (emphasis added).

¹⁵ A TV-14 program also may contain "infrequent coarse language" or no adult language, "limited violence" or no violence, and some "suggestive sexual dialogue and situations" or no sexual content.

¹⁶ Moreover, the industry rating fails to identify whether the program *actually does* contain coarse language and/or suggestive sexual situations.

¹⁷ *Industry Proposal*, *supra* note 14, at 2.

In summary, by taking the "V" out of V-chip, the industry system fails to empower parents to block violent programming. Contrary to Congress' fundamental intent, the industry system fails to facilitate parental blocking of violent programming, and thus it is unacceptable.

III. THE INDUSTRY RATINGS SYSTEM IS NOT ACCEPTABLE BECAUSE IT DOES NOT EMPOWER PARENTS TO MAKE EFFECTIVE PROGRAMMING DECISIONS FOR THEIR CHILDREN

The industry system does not empower parents as Congress intended because it withholds specific content-descriptive information. By providing an age-based ratings system instead of a content-descriptive system, the industry plan actually robs parents of the power to determine what programming is appropriate for their children. In addition, the industry ratings system will not work with the V-chip technology to permit parents to make informed programming choices.

A. The Industry System Robs Parents of the Power to Make Effective Programming Choices for Their Children by Withholding Content-Descriptive Information About Violence, Sexual Content, and Adult Language

The industry system robs parents of the power to make effective programming decisions for their children. By filtering the producer's content evaluation through his or her judgment of what programming is suitable for children within a given age range, the industry system hides the content-specific basis for its ratings from the public.

When rating a particular program, the producer must examine the program's content to determine, for example, whether it contains violence, sexual content, or strong language.

However, the industry ratings hide these content evaluations of the producer from the public and, instead, release the producer's age-based rating such as TV-PG or TV-14. By obscuring the content rationale for a producer's age-based determination in this deceptive manner, the industry system robs parents of the power to make effective programming choices for their children.

The determination that a program is inappropriate for children of a certain age is one that parents are best equipped to make. Children possess varying sensitivities and levels of cognitive, social, and emotional maturity, and it is the parents who can best assess the needs of their own children. Moreover, not all parents are concerned to the same degree about the same types of material; some may be more concerned about violence, while others may be more concerned about sex.¹⁸ Thus, the value judgment of a producer that, for example, "many parents would find [the program] unsuitable for children under fourteen years of age,"¹⁹ is based on the false premise that there is one universal standard of program suitability for all children.

Food labels provide a helpful analogy. Because consumers have diverse nutritional concerns regarding the type (i.e., fat, cholesterol) and intensity (i.e., low, medium, or high percentage) of food content, food labels provide specific information regarding a food's content type and intensity. Similarly, because parents have diverse concerns regarding their children's television diet, program ratings must provide specific information about the content type and intensity in each program.

¹⁸ See *Action for Children's Television v. FCC*, 11 F.3d 170, 185 (1993) (Edwards, J., concurring) ("[S]ome [parents] might modify a prohibition depending upon the nature of the material and the age of the child ... and family values [W]e surely cannot assume that all parents will act in some uniform way in 'supervising' their children.").

¹⁹ *Industry Proposal*, note 14, at 2 (describing the TV-14 rating).

In addition to substituting the judgment of a Hollywood producer for what should be the child-rearing judgment of the parent, there are other reasons why it is wholly inappropriate for producers to make these age-based determinations regarding content. First, the industry system empowers each producer to interpret the ratings category descriptions according to his or her own self-interest. Since producers want to maximize audience share, they have a strong incentive to choose a broader rating over a more restrictive rating. The industry categories themselves give producers vast opportunity for such self-interested interpretation. For example, the industry description of the TV-PG ratings category states that a program category “may contain material that some parents would find unsuitable for younger children.”²⁰ This language gives each producer broad discretion in interpreting the term “unsuitable.”²¹ As a result, most television programs receive the less restrictive TV-PG rating.²²

Second, the industry system forces producers to make judgments beyond their area of expertise. For example, the industry guidelines require producers to determine whether a particular program is “appropriate for all children” or only “for children age 7 and above.”²³ Because producers actually create the programming, they likely have the expertise to distinguish among different types of program content. However, because producers lack expertise in child development and familiarity with the individual children in the viewing audience, they do not

²⁰ See *id.* (citing industry system guidelines).

²¹ The inconsistency in the ratings is compounded as each producer’s ratings determination is further subject to the whims of the local stations that air his or her program.

²² See *infra* part III.B. (discussing the breadth and imprecision of the industry ratings categories).

²³ *Industry Proposal*, *supra* note 14, at 1-2 (describing the TV-Y and TV-Y7 ratings, respectively).

have the knowledge necessary to state with authority whether or not a program is appropriate for children of a given age.

In summary, parents are the people most qualified to make choices regarding what television programming is harmful to their children. However, the industry proposal deprives parents of the content-specific information that they need to make these choices effectively. Instead, the industry system places the responsibility on producers, who are not qualified to make a disinterested, informed judgment regarding what programming is appropriate for individual children to watch.

B. The Industry Ratings System Will Not Work With the V-chip To Allow Parents To Make Effective Programming Choices For Their Children

Another problem with the industry ratings system is that it has been designed and implemented in a way that will not work with the V-chip to allow parents to make effective programming choices for their children. The purpose of the V-chip provision was not to promote a ratings system itself, but rather to “transmit such ratings to permit parents to block the display of video programming that they have determined is inappropriate for their children.”²⁴ The industry system fails to meet this goal because the age-based ratings categories are too broad and imprecise to be useful. Under the industry system, three disparate types of content, violence, sexual content, and adult language, are lumped together under a single rating, and the ratings fail to identify whether a program does in fact contain a certain type of content. As a result of this

²⁴ § 303(w)(2).

breadth and imprecision, parents will face the inadequate choice between blocking far more or far less programming than they would like.

The industry system categories are so broad that programs with disparate content receive the same rating, most often TV-PG. For example, Fox's *Beverly Hills 90210* has been rated TV-PG, which means that it may contain "limited violence," "suggestive sexual dialogue and situations," and "infrequent coarse language."²⁵ The prime time melodrama presumably received the TV-PG rating due to its "suggestive dialogue and situations." NBC's *Prince Street*, which focuses on undercover detectives, received the same TV-PG rating, most likely because of its "limited violence." Thus, under the industry system, programs with very different types of content receive the same rating.

Currently, over 61% of prime time programs receive the TV-PG rating²⁶ -- regardless of whether they contain wholesome family content or more adult-oriented content. Episodes of CBS's wholesome family dramas, *Promised Land* and *Touched By an Angel*, have received the same TV-PG rating as programs containing violence, sexual content, and coarse language. For example, the following programs containing very violent scenes received the same TV-PG rating as the wholesome family dramas: Fox's *X-Files* episode with graphic shots of fungus-eaten

²⁵ See *Industry Proposal*, *supra* note 14, at 2 (describing the TV-PG rating).

²⁶ *Ratings Reality Check*, Study from the Parents Television Council (released Feb. 11, 1997) (citing the results of a study performed Jan. 3-16, 1997).

Although the industry system has now been in place for approximately three months, the percentage of TV-PG ratings has remained roughly the same. An informal review of programming conducted by Marjorie J. Dickman of the Institute for Public Representation found that, for the week of Mar. 1-7, 1997, over 64% of prime time programs fell into the TV-PG "black hole." (This percentage represents the number of hours of prime time programs on ABC, CBS, NBC, Fox, UPN, and the WB that received a TV-PG rating, divided by the number of hours of these programs for which *TV Guide* printed a rating.)

human corpses; ABC's *High Incident* episode depicting one police officer beating up another; and Fox's *New York Undercover* episode about a seven-year-old boy gunned down during a robbery. Moreover, the following programs containing sexual content carried the same TV-PG rating as the family-oriented programs: Fox's *Beverly Hills 90210* episode in which a female co-ed says to a male co-ed, "I'm not in interested in a relationship right now," to which he retorts, "[But] we've been sleeping together ..."; NBC's *Friends* episode in which a twenty-something woman goes to her neighbors's apartment to complain about noise and then ends up having sex with him; and NBC's *Chicago Son's* episode in which a twenty-something man brags about his plan to invite a female colleague to a bed and breakfast "where [they'll] eat pralines off each other's naked bodies." Similarly, the following programs containing coarse language received the same TV-PG rating as the wholesome family programs: NBC's *Friend's* episode in which a character sings "jingle bitch screwed me over, go to hell jingle whore"; ABC's *Grace Under Fire* episode containing the words, "bastard," "bitched," and "ass"; and CBS's *Cybill* episode involving a masturbation joke and the use of the word "ass" and the phrase, "Mount me Hercules, and ride me all night long." A ratings system that results in the majority of prime time programming falling under the same rating, such as the industry's TV-PG rating, fails to empower parents to distinguish among the various content types or intensity levels as Congress intended.

If the current industry ratings system is still in use when the V-chip is implemented, this TV-PG "black hole" will severely limit the ability of parents to make viewing choices for their children. Parents will be faced with an "all or nothing" proposition -- the choice between permitting their children to watch all TV-PG programming, including adult-oriented content, or

no TV-PG programming, thereby depriving their children of family-oriented content. Such a choice will make the V-chip nearly useless.

In summary, without ratings that provide specific information about the content type and intensity in a program, the V-chip will serve no greater purpose than the on-off button. Because the industry system will not work with the V-chip to provide such content-specific information to parents, it is unacceptable.

IV. AN ACCEPTABLE RATINGS SYSTEM MUST CONVEY CONTENT-DESCRIPTIVE INFORMATION

At minimum, an acceptable ratings system must convey content-descriptive information, including the type and intensity of programming content. Unlike the present industry ratings system, a content-descriptive system effectuates congressional intent because such a system specifically identifies the type and intensity of content that each program actually does contain. For example, if a program receives the virtually all-encompassing TV-PG rating, the rating is essentially meaningless; it merely tells parents that “the program may contain infrequent coarse language, limited violence, some suggestive sexual dialogue and situations.”²⁷ However, a content-descriptive rating tells parents that a particular program *actually does* contain “limited violence,” but it does not contain “infrequent coarse language” or “suggestive sexual dialogue and situations.” Accordingly, a content-descriptive ratings system not only specifically addresses the harms of violent programming, but also it can be used in conjunction with the V-chip to allow parents to make meaningful programming choices for their children with regard to

²⁷ *Industry Proposal*, *supra* note 14, at 2.

all content. Such a system is both feasible and simple, and it already has garnered much support among parents, child experts, the industry, and members of Congress.

Despite industry claims, a content-descriptive system is just as feasible as the industry system. The HBO/Showtime ratings system, which parents have used for over twelve years to block out harmful programming, provides one well-established example of such a content-descriptive system. This system offers program-specific content information, noting adult themes, vulgar language, and degrees of violence, nudity, and sexual situations.²⁸ Similarly, the video game industry reports content judgments in the form of bar code ratings that indicate the levels of violence, sex, and profane language included in the product.²⁹ Moreover, the Recreational Software Advisory Council, an independent body composed of research experts, teachers, teenagers, and industry representatives, is in the process of extending these video game ratings to Internet Web sites.³⁰

Furthermore, a content-descriptive system does not contravene the industry's claim that having producers assign program ratings "is the only feasible way in which the 2,000 hours of television programming distributed each day could be rated."³¹ When determining an age-based rating under the industry system, producers already are making the content-based judgments that

²⁸ Lon Grahnke, *Label it Vague; New TV Rating System Lacks Details on Content*, CHICAGO SUN-TIMES, Feb. 11, 1997, at 33. The HBO/Showtime system uses the following content-descriptors: AL (Adult Language); GL (Graphic Language); MV (Mild Violence); V (Violence); GV (Graphic Violence); N (Nudity); BN (Brief Nudity); AC (Adult Content); SC (Strong Sexual Content); and RP (Rape). *Id.*

²⁹ Kunkel, *supra* note 5.

³⁰ *Id.*

³¹ *Industry Proposal*, *supra* note 14, at 3.

a content-descriptive system requires. For example, when deciding between the industry's TV-PG and TV-14 ratings, producers are already distinguishing between programs that contain "limited violence" and those that contain "more intense violence."³² Under a content-descriptive system, producers still may assign the ratings. Yet, they only will have to make the content determinations for which they are qualified; producers will not be required to make judgments beyond their expertise regarding what programming is appropriate for different age groups.³³

Also, a content-descriptive ratings system is just as simple as the industry's age-based system. Not only is it easy for networks to air, but also it is easy for newspapers and the *TV Guide* to print because content-descriptive ratings would not have to take up any more space than the industry ratings.³⁴ In addition, more than forty of the nation's leading newspapers have voiced their support for a content-descriptive ratings system,³⁵ presumably indicating their willingness to print content-descriptive ratings information once a definitive ratings system is adopted.

Moreover, when the age-based system was first developed by the Motion Picture Association of America ("MPAA") in 1968, it *may* have been adaptable to television

³² *Id.* at 2.

³³ *See supra* part III.A. (explaining that producers are qualified to make content-based, not age-based, judgments).

³⁴ *See Hearing, supra* note 5 (testimony of Lois Salisbury, President, Children Now) (stating that a content-descriptive system "wouldn't have to take up any more room" than the industry system).

³⁵ *See, e.g., The TV Rating Wars*, N.Y. TIMES, Dec. 15, 1996, § 4, at 12; *Need Tougher TV Ratings*, USA TODAY, Dec. 5, 1996, at 13A; *TV Ratings: The Soap Opera*, WASH. POST, Dec. 16, 1996, at A24; *Birth Pains for TV Rating System; Parents Need a Clear Indication*, L.A. TIMES, Dec. 13, 1996, at B8; *TV Ratings System Tunes Out Parents*, CHI. SUN-TIMES, Dec. 6, 1996, at 39.

programming. However, the MPAA system is not adaptable to modern television for three reasons. First, thirty years ago, the amount of television programming and motion pictures to be rated were somewhat similar. Today, however, there is a vast difference between the amount of motion pictures and television programming.³⁶ Second, three decades ago, television content did not stray far from *Leave It To Beaver*-esque subject matter. Today, however, “children’s” television programming ranges from the *Leave It To Beaver* variety to Fox’s sophisticated *Simpson’s* cartoon and MTV’s raucous *Beavis and Butthead* cartoon. Third, parents are able to investigate the content of a movie before it is viewed by their child. Yet, parents typically are not able to do such investigation before their child watches a television program. Given this increase in the amount of televised programming and the variety of televised content as well as the inability of parents to investigate the content of television programs, parents need detailed guidance to meaningfully differentiate among programming content. Age-based “red flags,” such as the industry system ratings, are not sufficient to aid parents in making effective television programming choices for their children. Rather, parents need content-descriptive information in order to make these decisions in a meaningful manner.

A content-descriptive system offers another advantage over an age-based system because it does not create a “forbidden fruit” effect for children.³⁷ Research shows that children are especially attracted to a program that carries an age-based rating, where the rating labels the

³⁶ The motion picture panel only rates two or three movies a day, whereas today’s television industry must rate the equivalent of 1,000 movies a day. David Kunt, *Industry Releases TV Ratings Plan; Reaction Mixed, FCC to Field Comments*, BNA’S ELEC. INFO. POLICY & L. RPT. (Vol. 2), Jan. 3, 1997, at 8 (statement of Jack Valenti, President and CEO, Motion Picture Association of America).

³⁷ J. CANTOR ET AL., *Ratings and Advisories*, in NAT’L TELEVISION VIOLENCE STUDY (Exec. Summary), at 35-36 (1997) [hereinafter *Ratings and Advisories*].

program as appropriate for older children.³⁸ Children know that this rating means that the program is forbidden to children of their own age. Their knowledge of this “forbidden fruit” causes them to be more attracted to the program with the age-based rating than they are to the identical program when it carries a content-descriptive rating.³⁹ For example, the most recent study on this subject reports that, of eight ratings systems tested, children were most attracted to programs carrying the MPAA’s higher level age-based ratings; in contrast, children were not attracted to programs carrying, for example, the “graphic violence” rating.⁴⁰ Because age-based ratings advertise a program’s restricted quality in a way that attracts children, the industry system makes the supervisory role of parents more difficult than it would be under a content-descriptive system.⁴¹

Accordingly, it is not surprising that roughly 80% of parents prefer a content-descriptive ratings system over an age-based system.⁴² Moreover, once parents actually had a chance to use

³⁸ *Id.*

³⁹ *Id.*; J. CANTOR & K. HARRISON, *Ratings and Advisories for Television Programming*, in NAT’L TELEVISION VIOLENCE STUDY, at 361-410 (1996); B.J. Bushman & A.D. Stack, *Forbidden Fruit vs. Tainted Fruit: Effects of Warning Labels on Attraction to Television Violence*, in J. OF EXPERIMENTAL PSYCHOL.: APPLIED, at 2, 207-26 (1996); B.J. Bushman, *Effects of Warning and Information Labels on Attraction to Television Violence in Viewers of Different Age* (manuscript under review) (1997).

⁴⁰ *Ratings and Advisories*, *supra* note 37, at 35-36 (1997).

⁴¹ See J. Cantor (press release) (Mar. 26, 1997) (“Basing the new TV ratings on the MPAA [age-based] system runs the risk of making parenting harder by attracting children to the very programs we’re trying to shield them from.” (commenting on her research for *Ratings and Advisories*, in NAT’L TELEVISION VIOLENCE STUDY (1997))).

⁴² See Survey from Media Studies Center (conducted by the Roper Center for Public Opinion Research) (released Dec. 12, 1996) (reporting that 79% of parents with children in the household prefer a system that gives more details about content over an age-based system); *What Parents Want in a Television Rating System: Results of a National Survey*, Survey from the

the industry system, the percentage of parents preferring a content-descriptive system *increased*.

An overwhelming 94% of parents said that they would be likely to use a television ratings system that provides more detailed information on the violence, sex, and language content of a program than the industry system offers.⁴³ Moreover, a recent survey reported that 88% of parents said that content-descriptive ratings are easy for them to understand.⁴⁴

Top communications and children's media experts from across the country concur with this parental preference for a content-descriptive ratings system. In a recent survey, nearly 95% of these experts agreed that a ratings system should not simply designate the age-appropriateness

National PTA/Institute for Mental Health Initiatives (conducted by the University of Wisconsin, Madison) (released Nov. 21, 1996) (reporting that 80% of parents prefer a system that provides separate ratings for each program based on violence, sex, and adult language, rather than by age group); *id.* (reporting that parents find the HBO/Showtime ratings system, which specifies type and intensity of violence, sex, and adult language, to be significantly more helpful and more objective than an age-based system).

⁴³ Survey from The National Institute on Media and the Family (released Feb. 12, 1997). *See also* Survey from the Family Channel (conducted by the Yankelovich Partners) (released Mar. 18, 1997) (reporting that 70% of parents prefer a content-based system over an age-based system).

CME *et al.* urge the FCC to place the results of the industry-funded surveys conducted by Peter D. Hart Research Associates ("the Hart group") in their appropriate context. These studies do *not* indicate, as the industry claims, that 83% of parents prefer an age-based system -- the question to which parents responded offered no alternative to an age-based system. *Statement of Dale Kunkel, Ph.D., In Response to the Television Industry's Claim of Public Support for its New V-chip Rating System* (Dec. 19, 1996). Rather, the question described the industry system only and asked respondents if they would find such a system helpful. *Id.* Thus, what this study really indicates is that 83% of parents like the *idea* of a ratings system. *Id.* Asked about almost any ratings system, parents would indicate strong support because they desperately want more information about program content. *Id.* This point is corroborated by a second Hart group poll, which indicated essentially the same degree of support for a content-descriptive system -- 84% supported it. *Id.*

⁴⁴ Survey from The National Institute on Media and the Family (released Feb. 12, 1997).

of television programs, but also should include specific ratings for violence, sexual content, and adult language.⁴⁵

In addition to the support of parents and experts, members of the broadcasting and cable industries have expressed their support for a content-descriptive system. PBS and BET have expressed their disapproval of the industry ratings by refusing to use them.⁴⁶ Also, a leading trade magazine for the cable industry reports that “[t]he cable people really prefer additional content labels.”⁴⁷

Furthermore, following a barrage of criticism from lawmakers and children’s advocacy groups at the recent Senate Commerce Committee hearing (“the hearing”),⁴⁸ industry support for a content-descriptive system grew.⁴⁹ It has been widely reported that Fox Chairman, Rupert Murdoch may now favor augmenting the existing voluntary system with content labels.⁵⁰ Also,

⁴⁵ CHILDREN NOW, MAKING TELEVISION RATINGS WORK FOR CHILDREN AND FAMILIES: THE PERSPECTIVE OF CHILDREN’S EXPERTS 7 (June 1996).

⁴⁶ See *PBS Advocates More Content Information, Not Less*, ELEC. MEDIA, Mar. 10, 1997 (statement of Ervin Duggan, President and CEO, PBS) (“PBS advocate[s] [a ratings system] that would give viewers more information about program content.”); Esther Iverem, *BET Shuns Program Ratings System*, WASH. POST, Feb. 20, 1997, at B1 (stating that BET is waiting for “a more efficient and practical ratings system” (quoting Robert L. Johnson, Chairman and CEO, BET Holdings, Inc.)); *TV Ratings Opponents to Continue to Fight Against Industry Plan at FCC*, COMM. DAILY, Dec. 23, 1996, at 3 (reporting the dissatisfaction of BET and PBS with the industry system).

⁴⁷ Jim Cooper, *Is Everybody Happy?*, CABLEVISION, Jan. 27, 1997, at 30.

⁴⁸ *Hearing*, *supra* note 5.

⁴⁹ See *TV Rating System May Get Some More Letters*, STAR TRIB., Mar. 14, 1997, at 20E (statement of Sen. John McCain (R-AZ), Chairman, Senate Commerce Committee) (“It’s clear [the industry] is prepared to move off their present system.”).

⁵⁰ Jeannine Aversa, *TV Executives Consider Violence Rating Codes; Sex, Language Standards May Be Added to System*, ROCKY MTN. NEWS, Mar. 16, 1997, at 6A; *TV Rating System May Get Some More Letters*, VARIETY, Mar. 14, 1997, at 20E; Jane Hall, *TV Industry*

newspapers across the country report that cable leaders and trade association officials support supplementing the existing industry ratings with the letters, “V,” “S,” and “L,” to note a program’s inclusion of violence, sex, and adult language.⁵¹

In addition to the support of parents and industry members, many members of Congress support a content-descriptive system. At the hearing, ten members of Congress spoke in favor of a content-descriptive system.⁵² In the words of Senator John McCain (R-AZ), Committee Chairman, “[T]hese expressions of interest and concern on the part of members from both sides of the aisle, representing all of the political spectrum,” show that there is much support for a content-descriptive system.⁵³

Considers Adding Content Labels, L.A. TIMES, Mar. 12, 1997, at F2.

⁵¹ Aversa, note 50, at 6A; *TV Rating System May Get Some More Letters*, *supra* note 50, at 20E; Hall, *supra* note 50, at F2; Paul Farhi, *TV Execs Weigh Ratings Change; Critics Continue to Push for More Specific Content Description*, WASH. POST, Mar. 11, 1997, at B1.

⁵² *Hearing*, *supra* note 5 (testimony of Sen. Ernest F. Hollings (D-SC), Sen. Kay Bailey Hutchison (R-TX), Sen. Byron L. Dorgan (D-ND), Sen. Slade Gorton (R-WA), Sen. Sam Brownback (R-KS), Sen. Daniel R. Coats (R-IN), Sen. Kent Conrad (D-ND), Sen. Joseph I. Lieberman (D-CT), Rep. Edward J. Markey (D-MA), Rep. Joseph P. Kennedy, II (D-MA)).

See also Letter from Rep. Edward J. Markey *et al.* to William F. Caton, Secretary, Federal Communications Commission (April 8, 1997) (comments of members of Congress concerning Congress’s intent in approving the V-chip provision).

⁵³ *Id.*

CONCLUSION

A review of the legislative history clearly shows that Congress intended a ratings system to specifically identify violent content and to provide parents with all descriptive information necessary to empower them to make effective programming choices for their children. Thus, at minimum, a ratings system must meet these criteria in order to be “acceptable.” If the industry fails to voluntarily modify its existing ratings system to meet these minimum criteria, the FCC has no choice but to proceed with an advisory committee.⁵⁴

⁵⁴ If the industry fails to voluntarily establish an acceptable plan, the Commission must develop guidelines for rating programs based on recommendations from an advisory committee. § 303(w). For effectiveness of this subdivision, see § 551(b)(2), (e)(1), 110 Stat. at 140-41, 142.